

# ARTER & HADDEN<sub>LLP</sub>

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

*ex parte*

April 27, 1998

Magalie Roman Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20054

Re: CC Docket Nos. 92-237 Carrier Identification Codes

Dear Ms. Salas:

CommuniGroup of K.C., Inc. ("CGI") is a small interexchange carrier ("IXC") operating in the midwestern United States. CGI specializes in the dial-around market, chiefly using the carrier access code, 10998. As part of the June 30, 1998, mandatory conversion to four-digit carrier identification codes ("CICs"),<sup>1</sup> CGI must inform and educate its customers to dial 1010998 to reach CGI's services. As shown below, CGI's educational efforts are being thwarted by US WEST's policies and actions regarding bill inserts. Accordingly, the FCC should direct all incumbent local exchange carriers ("ILECs"), especially US WEST, to allow IXCs to include customer education material in the ILECs' May and June 1998, customer bills.<sup>2</sup> Also, the FCC should direct all Tier 1

<sup>1</sup> *Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)*, Order on Reconsideration, Order on Application for Review, and Second Further Notice of Proposed Rulemaking, CC Docket No. 92-237, 10 Comm. Reg. (P&F) 323 (1997) ("CIC Recon Order").

<sup>2</sup> The FCC has exclusive jurisdiction over the North American Numbering Plan ("NANP") as it applies to the United States. 47 U.S.C. §251(e)(1). This jurisdiction extends to all telephone numbers used in the United States, which includes CICs and, by implication, customer access codes. *Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, 9 FCC Rcd 2068, 2069 (1994) at n.10 and accompanying text. In this Notice, the Commission set forth its authority over telephone numbers. "[T]his Commission may issue orders and otherwise regulate such [telephone] numbers and their administration." *Id.* at ¶18.

*John H. ...*

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ILECs to advertise the change in dialing patterns for carrier access codes in advance of June 30.

One of CGI's prime efforts at customer education involves sending special messages in bills for service to CGI's customers. CGI uses ILECs for billing and collection services for dial-around traffic, as do most dial-around carriers. Accordingly, CGI contacted several ILECs, in March 1998, to request that they include, with the "CGI bill pages," a message from CGI to its customers, informing them of the carrier access code dialing pattern change. The requested message would also tell customers to begin immediately using the new carrier access code 1010998 to reach CGI's services.

The three largest ILECs that perform billing and collection services for CGI are GTE, Southwestern Bell Telephone ("SWBT") and US WEST. Each was contacted by CGI in March 1998, and were given a proposed billing message, along with a request to include the CGI customer education messages in May and June bills. Both GTE and SWBT accepted CGI's message as written and agreed to include this message, at CGI's cost, in bills to CGI's customers during both May and June 1998.

US WEST, on the other hand, would not accept CGI's proposed message to its customers. The text, which US WEST found to be objectionable, read as follows:

**\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\***

The Federal Communications Commission has required CGI and all other telecommunications carriers to expand their five-digits long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number. Use this new number immediately. For new stickers call CGI at 1-800-894-6050. Thank you for your business.

US WEST claimed that CGI's proposed bill insert message violated US WEST's policies against accepting bill insert messages for services that compete with any US WEST product or service. Also, US WEST found it objectionable that CGI's message contained CGI's new carrier access code, 1010998. US WEST stated that the proposed message was anti-competitive.

CGI finds the US WEST position to be mystifying for two reasons. First, CGI does not understand US WEST's concern about competition, since US WEST is barred, by law, from competing in the interLATA services market,<sup>3</sup> which is CGI's largest market. CGI and US WEST simply are not significant competitors today. Second, two other large ILECs readily accepted CGI's proposed billing message, even though one of

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<sup>3</sup> 47 U.S.C. §271.

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them, GTE, is actually competing against CGI in the interLATA market. It is curious that a non-competitor (US WEST) does not want CGI's customers to know how to reach CGI's services, at the same time an actual competitor (GTE) is readily willing to allow CGI to use GTE's telephone bills to educate CGI's customers how to reach CGI's services.

After additional, time-consuming negotiations, US WEST finally agreed to accept bill insert language that reads as follows.

**\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\***

The Federal Communications Commission has required CGI and all other telecommunications carriers to expand their five-digits long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this new number immediately. For new stickers call CGI at 1-800-994-6050. Thank you for your business.

After acceptable words had finally been found, CGI repeated its request to have US WEST provide this message to CGI's customers in the May and June 1998 bills. Soon thereafter, on April 13, 1998, CGI was contacted by a representative of US WEST. The US WEST representative told CGI that US WEST did not have sufficient resources to include CGI's customer education message in US WEST bills until September or October 1998. This statement is quite mystifying because US WEST had already prepared mock-ups of the CGI bill pages, which contained the agreed to language, on April 10, 1998. A copy is attached hereto as Exhibit "A."

US WEST's claimed lack of billing resources is puzzling when both SWBT and GTE have adequate resources. Because most of CGI's customers are located in SWBT's service territory, US WEST will need far fewer resources to honor CGI's request for bill inserts than SWBT. Assuming that an ILEC must send a monthly bill for every access line it serves, US WEST's billing burden is comparable to those of both SWBT and GTE. SWBT has 14.6 million access lines; GTE has 17.1 million access lines; and US WEST has 15.3 million access lines.<sup>4</sup> One would assume that US WEST has a billing system comparable to both SWBT and GTE. Yet, US WEST announced that it could not accommodate CGI's needs, while the other two ILECs can.<sup>5</sup>

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<sup>4</sup> Federal Communications Commission, *Statistics of Common Carriers, 1996*, Table 2.10 (1997).

<sup>5</sup> CGI cannot imagine that billing and collection services are not profitable for US WEST. Other ILECs have suggested that these services are, indeed, quite profitable. See, e.g., remarks of Gregg Sayre, Rochester Telephone Company, *Public Forum on Local Exchange Carrier Billing for Other Businesses*, June 24, 1997, (Transcript at 32) (N.B. The transcript was imported from the FCC's Internet site and converted to Microsoft Word® word processing software, which may result in different pagination.)

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CGI wonders if US WEST's "resource problem" was necessarily created by its continual haggling over the language in CGI's proposed bill insert. US WEST apparently views CGI as a competitive threat,<sup>6</sup> given the vigorous stand taken by US WEST. Seemingly, the lengthy negotiations simply pushed CGI's request out of the window of opportunity to use the May and June bills. Perhaps, if US WEST had acted more reasonably, in the manner of SWBT and GTE, by accepting CGI's original message text, US WEST would have had adequate resources to meet CGI's needs.

More recently, US WEST's Product Marketing Group again contacted CGI, stating that US WEST found some available billing resources. US WEST stated that it could accommodate CGI, but only to a limited degree. The RBOC informed CGI that its bill inserts could be included in US WEST's bills to CGI's customers, beginning June 11, 1998. Yet, no sooner had billing resources been made available to CGI, than US WEST recalled them. On April 22, 1998, CGI received a call from US WEST informing CGI that the US WEST Mass Marketing Group decided that bill inserts should not be used by CGI. US WEST was withdrawing their billing resources from CGI. "Things just keep getting curiouser and curiouser."<sup>7</sup>

CGI cannot help but draw the inference that US WEST's conduct is calculated, coordinated, and designed to create customer confusion in the interLATA market, from which US WEST hopes to profit when it enters the interLATA business.<sup>8</sup> Since most users of dial-around services are price conscious, and US WEST has announced a low-price strategy for interLATA long distance services,<sup>9</sup> US WEST would benefit if customers had difficulty reaching dial-around carriers after June 30, 1998. It is easy to infer US WEST's anti-competitive intent from its behavior. The FCC must not allow

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<sup>6</sup> US WEST apparently is quite sensitive to competition from small providers on all fronts. Its recent application to the Montana Public Service Commission to provide interLATA services cites "unprecedented" competition from Mid-Rivers Telephone Cooperative, Inc., ("Mid-Rivers"), *et al.* *Communications Daily*, March 31, 1998, at 4. Mid-Rivers serves 10,100 access lines, in 27 exchanges, over a 21-county area in eastern Montana and western North Dakota, according to information on Mid-Rivers' website.

<sup>7</sup> L. Carroll, *Alice in Wonderland*, (1869).

<sup>8</sup> As noted in n.7 *supra*, US WEST has already filed an application to provide interLATA services with the Montana Public Service Commission. The RBOC promised customers savings up to 60% off competitors' rates, according to its president, Solomon Trujillo. *Communications Daily*, March 31, 1998, at 4.

<sup>9</sup> See n.8 *supra*.

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large ILECs to create customer confusion to benefit ILEC entry into the interLATA market.

The viability of the dial-around market, which gives customers inexpensive, additional choices of IXCs, is completely dependent on a smooth change in carrier access code dialing patterns. Today, customers who use dial-around services must, by definition, dial five more digits than those customers who use a presubscribed carrier's network. These customers are willing to dial more digits because they believe the added savings outweigh the additional effort on their part. With the mandatory use of four-digit CICs, beginning July 1, 1998, dial-around customers must dial seven extra digits, rather than five, in order to receive the benefit of lower prices.<sup>10</sup> Presumably, the market will continue to see customer willingness to dial extra digits in exchange for cheaper rates.

However, it is questionable that customer willingness to dial extra digits to obtain lower prices is unlimited. For example, it is unlikely that the dial-around market would be as vibrant today if customers had to dial 20 extra digits. Similarly, it is unlikely that customers will continue to use dial-around services if they have bad experiences with the forthcoming change in customer access code dialing patterns. Obviously, customer education and instruction are key to minimizing the number of bad customer experiences. CGI agrees wholeheartedly with the FCC that the primary responsibility for customer education lies with the serving IXC.<sup>11</sup> CGI does not believe, however, that the FCC contemplated that some ILECs would interfere with IXC customer education efforts when the FCC placed the main responsibility for customer education on the individual IXC.

ILEC billing is essential to the dial-around market.<sup>12</sup> There are simply no reasonable alternatives to ILEC billing for these services. Therefore, the associated ILEC bill inserts must be made available for customer education by dial-around carriers. It is unfair for ILECs to use their control over these essential services to hinder an IXC's efforts to educate its customers. Moreover, it is even more unfair when US WEST has provided billing services for CGI's dial-around traffic profitably for some time and then,

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<sup>10</sup> CGI is not complaining that there is something inherently unfair with multi-digit carrier access codes. Indeed, CGI takes advantage of their availability to meet the demands of a particular segment of the market.

<sup>11</sup> *CIC Recon. Order*, 10 Comm. Reg. (P&F) at 332.

<sup>12</sup> Remarks of Michael Polandick, MCI, *Public Forum on Local Exchange Carrier Billing for Other Businesses*, June 24, 1997, (Transcript at 148).

# ARTER & HADDEN<sub>LLP</sub>

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April 27, 1998

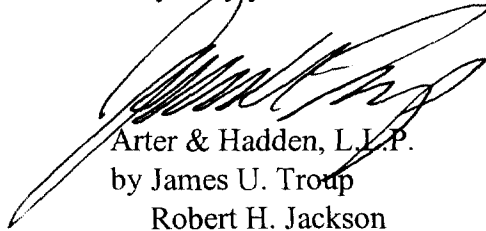
Page 6

through a combination of unreasonable edit demands and "resource shortages," keeps a timely, dial-around billing message from reaching CGI's customers.

Accordingly, the FCC should use its authority under Sections 4(i) and 251(e)(1) of the Communications Act of 1934, as amended,<sup>13</sup> to take the following actions. The FCC should direct all Tier 1 ILECs, including US WEST, to allow IXCs to include bill insert messages, which instruct the IXCs' customers how to use the new seven-digit carrier access codes, in the ILECs' May and June 1998 bills. IXCs should, of course, pay such ILECs their standard rates for billing messages. Second, the FCC should direct all Tier 1 ILECs to conduct their own advertising campaign to educate all customers to use the new seven-digit carrier access codes no later than July 1, 1998.<sup>14</sup>

Please place a copy of this letter in the record in the above-captioned proceeding. Acknowledgment and date of receipt of this letter are requested. A duplicate letter is attached for this purpose.

Very truly yours,



Arter & Hadden, L.L.P.  
by James U. Troup  
Robert H. Jackson

Enclosure

cc: A. Richard Metzger  
Geraldine A. Matisa  
Kent R. Nilsson  
Kris A. Monteith  
Renee Alexander  
David O. Ward  
Mark Markowicz

138309

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<sup>13</sup> 47 U.S.C. §§154(I) and 251(e)(1).

<sup>14</sup> Tier 1 ILECs should not have to spend more than 50 cents per customer for customer education. This amount is a fair sum that should ensure that all customers can reach their carrier of choice without substantial difficulty.

A



Account No: Npa-Pfx-Line-XXXX  
For questions, call 1-800-300-4045

CGI MARKET MESSAGE FOR CENTRAL EASY BILL BY C. SOLICH ON 4/10/98 PAGE 1 OF 1 804CS07A

Page 3

START VDP  
BLANK LINE

\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\*

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-694-6050. Thank you for your business.

BLANK LINE  
END VDP

ITEMIZED CALLS

NO.	DATE	TIME	TO PLACE	TO AREA NUMBER	TYPE	MINUTES	AMOUNT
1	Mmm dd	99:99A	XXXXXXXXXX XX	Npa Pfx-Line	X	9999	99,999.99
2	Mmm dd	99:99A	XXXXXXXXXX XX	Npa Pfx-Line	X	9999	99,999.99
3	Mmm dd	99:99A	XXXXXXXXXX XX	Npa Pfx-Line	X	9999	99,999.99
						SUBTOTAL	99,999.99

CALLS FROM XXX-XXXX

SUBTOTAL 99,999.99

MISCELLANEOUS CHARGES AND CREDITS

NO.	DATE	ITEM	TAX CODE	AMOUNT
4	Mmm dd	XXXXXXXXXXXXXXXX	99	99,999.99
5	Mmm dd	XXXXXXXXXXXXXXXX	99	99,999.99
				SUBTOTAL 99,999.99

THRIFTY CALL SUBTOTAL OF ITEMIZED CALLS \$99,999.99

TAX SUMMARY

XXXXXXXXXXXXXX	99,999.99
XXXXXXXXXXXXXX	99,999.99
THRIFTY CALL SUBTOTAL OF TAXES	\$99,999.99
THRIFTY CALL CURRENT CHARGES	\$99,999.99

Type of Long Distance Calls:  
X - XXXX XXXXXX - XXXXXX XXXX

Tax Code Explanation:  
99 - XXXXXXXXXXXXXXXXXXXXXXXXXXXX

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO THRIFTY CALL. THERE IS NO CONNECTION BETWEEN THRIFTY CALL AND U S WEST COMMUNICATIONS.

Received Time

Apr. 24. 12:27PM

Print Time

Apr. 24. 12:35PM





CENTRAL  
1234 ADDRESS  
BILL DATE: FEB 28 2099  
ACCOUNT NUMBER: 303 555-5555-123B

1 2 3 4 5 6 7 8  
1234567890123456789012345678901234567890123456789012345678901234

CGI SERVICES PAGE 1

START VDP

1 2 3 4 5 6 7 8  
1234567890123456789012345678901234567890123456789012345678901234  
BLANK LINE

\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\*

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-894-6050. Thank you for your business.

BLANK LINE

END VDP

#### ACCOUNT DETAIL

ITEMIZED CALLS N,NNN,NNN.NN  
TAXES N,NNN,NNN.N  
CGI SERVICES TOTAL \$N,NNN,NNN.NNCR

#### ITEMIZED CALLS

NO.	DATE	TIME	TO PLACE	TO AREA NUMBER	TYPE	MINUTES	AMOUNT
NN	MMM DD	NN:NNA	XXXXXXXXXXXXXXXX	NNNNNNNNNNNN	XXX	NNN.N	NN,NNN.NN
						SUBTOTAL	NN,NNN.NN

#### MISCELLANEOUS CHARGES AND CREDITS

NO.	DATE	ITEM	TAX CODE	AMOUNT
NN	MMM DD	XXXXXXXXXXXXXXXXXXXXXX	NN	NN,NNN.NNCR
			SUBTOTAL	NN,NNN.NNCR

CGI SERVICES SUBTOTAL OF ITEMIZED CALLS \$N,NNN,NNN.NN

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO  
CGI SERVICES. THERE IS NO CONNECTION BETWEEN  
CGI SERVICES AND U S WEST COMMUNICATIONS



FOR CGI SERVICES Billing inquiries call 1 800-300-4045 (NO CHARGE)

Received Time Apr. 24. 12:27PM Print Time Apr. 24. 12:34PM

CGI MARKET MESSAGE FOR CENTRAL LEGACY BY C. SOLICH ON 4/14/98 PAGE 1 OF 1 804CS07B  
THIS VDP SPACING CHART TO BE USED WITH BILL MOCKUPS 804CS07A AND 804CS07B

1	2	3	4	5	6	7
123456789012345678901234567890123456789012345678901234567890						

**\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\***

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-894-6050. Thank you for your business.

1	2	3	4	5	6	7
123456789012345678901234567890123456789012345678901234567890						

**® NEEDS TO BE TRANSLATED TO 'HEX 9A' FOR CENTRAL CRIS**

**\*\* CGI CUSTOMERS \*\*IMPORTANT NOTICE\*\***

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-16-888+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-894-6050. Thank you for your business.

**ITEMIZED CALLS**

NO.	TIME	PLACE	AREA - NUMBER	TYPE	MIN	
MMM DD 1.	9999XM	TO XXXXXXXXXX XX	NPA PFX - LINE	X	9999.9	99,999.99
MMM DD 2.	9999XM	TO XXXXXXXXXX XX	NPA PFX - LINE	X	9999.9	99,999.99
		(SUBTOTAL			99,999.99 )	

**CALLING CARD CALLS**

MMM DD 4.	9999XM	TO XXXXXXXXXX XX	NPA PFX - LINE			
		FR XXXXXXXXXX XX		X	9999.9	99,999.99
MMM DD 5.	1212PM	TO XXXXXXXXXX XX	NPA PFX - LINE			
		FR XXXXXXXXXX XX		X	9999.9	99,999.99
		(CALLING CARD SUBTOTAL			99,999.99 )	

**MISCELLANEOUS CHARGES AND CREDITS**

NO	ITEM	TAX CODE	
MMM DD 6.	XXXXXXXXXXXXXXXXXX	X	99,999.99
	(MISCELLANEOUS CHARGES AND CREDITS SUBTOTAL		99,999.99 )

Type of Long Distance Calls:  
D-DAY

E-EVENING

**TOTAL ITEMIZED CALLS** 99,999.99

**TAX- FED 98.99** 99,998.99

**TOTAL CGI SERVICES CHARGES (INCL TAX)** 99,998.99

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO CGI SERVICES.  
THERE IS NO CONNECTION BETWEEN U S WEST COMMUNICATIONS CGI SERVICES.



EASTERN

BILL DATE: FEB 28, 2099

ACCOUNT NUMBER: 319 555-5555 294

PAGE 1

1111111111222222222233333333334444444444555555555566666666667777777777888  
 456789012345678901234567890123456789012345678901234567890123456789012

BLANK LINE INSERTED BY SYSTEM IN PRINT PROCESS

\*\* CGI CUSTOMERS\*\*IMPORTANT NOTICE\*\*

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-894-6050. Thank you for your business.

END VDP

BLANK LINE INSERTED BY SYSTEM IN PRINT PROCESS

## ITEMIZED CALLS

NO.	TIME	PLACE	AREA-NUMBER	*	MIN	T
AAA NN	NN.	NNNNAA	TO AAAAAAAAAA AA	NNN NNN-NNNN	AAA NNNN.N	A N, NNN, NNN.NN
(SUBTOTAL N, NNN, NNN.NN )						

## CALLING CARD CALLS

AAA NN	NN.	NNNNAA	TO AAAAAAAAAA AA	NNN NNN-NNNN		
		PR AAAAAAAAAA AA	NNN NNN-NNNN	AAA NNNN.N	A N, NNN, NNN.NN	
(CALLING CARD SUBTOTAL N, NNN, NNN.NN )						

## MISCELLANEOUS CHARGES AND CREDITS

NO.	TIME	PLACE	AREA-NUMBER	*	MIN	T
NO.	ITEM					TAX CODE
AAA NN	NN.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX				A N, NNN, NNN.NNCR
(MISCELLANEOUS CHARGES AND CREDITS SUBTOTAL N, NNN, NNN.NNCR)						

\*-RATE APPLIED

E-EVENING

EF-EVENING COLLECT

X-CREDIT

T- TAX RATE APPLIED: A-NN.NN% B-NN.NN% C-NN.NN%

TOTAL ITEMIZED CALLS

N, NNN, NNN.NN

TAX- FED 1.92

N, NNN, NNN.NN

TOTAL CGI SERVICES CHARGES (INCL TAX)

N, NNN, NNN.NN

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO CGI SERVICES.  
 THERE IS NO CONNECTION BETWEEN U S WEST COMMUNICATIONS AND CGI SERVICES.



FOR CGI SERVICES

QUESTIONS CALL 1-800-300-4045 (NO CHARGE)

Received Time

Apr. 24. 12:27PM

Print Time

Apr. 24. 12:34PM

GI MARKET MESSAGE FOR EASTERN LEGACY BY C. SOLICH ON 4/10/98 PAGE 1 OF 1 804CS07D  
HIS SPACING CHART TO BE USED FOR MOCKUPS 804CS07C AND 804CS07D

1	2	3	4	5	6	7
123456789012345678901234567890123456789012345678901234567890						
** CGI CUSTOMERS**IMPORTANT NOTICE**						

The Federal Communications Commission has required CGI and all other telecommunications companies to expand their five digit long distance access code to seven digits effective July 1, 1998. Now simply dial 10-10-998+1+Area Code+Number and save on interstate calls. Use this code immediately. For stickers call CGI at 1-800-894-6050. Thank you for your business.

1	2	3	4	5	6	7
123456789012345678901234567890123456789012345678901234567890						